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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JULIO ENOK ACUNA CHINCHILLA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-71646

Agency No. A072-114-168

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 9, 2008^{**}
San Francisco, California

Before: B. FLETCHER, McKEOWN and N.R. SMITH, Circuit Judges.

Julio Enok Acuna Chinchilla appeals the denial of his application for asylum and withholding of removal. To establish eligibility for asylum, Acuna Chinchilla must establish that he is “unwilling or unable to return to his country of

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

origin because of ‘persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.’” Deloso v. Ashcroft, 393 F.3d 858, 863 (9th Cir. 2005) (quoting 8 U.S.C. § 1101(a)(42)(A)). Acuna Chinchilla must also establish that the persecution was at the hands of either government actors or actors the government is unable or unwilling to control. See Avetova-Elisseva v. INS, 213 F.3d 1192, 1196 (9th Cir. 2000).

In support of his asylum claim, Acuna Chinchilla presented evidence that his brother was killed by acquaintances and that guerillas attacked his family. As the Immigration Judge (IJ) noted, Acuna Chinchilla did not establish any connection between his brother’s death and any protected ground, nor did he establish that the government was unable or unwilling to control the men who killed his brother. As for the guerilla violence against Acuna Chinchilla’s family, even if this constitutes past persecution, he testified that he was not afraid of the guerillas. Actively denying that he has a fear of future persecution necessarily defeats his asylum claim. Therefore, substantial evidence supports the IJ’s determination that Acuna Chinchilla is not eligible for asylum.

Acuna Chinchilla also applied for withholding of removal. To qualify for withholding of removal, he bears a higher burden of proof: he must show that there is a “clear probability” that he “would be subject to persecution on one of the specified grounds.” Al-Harbi v. INS, 242 F.3d 882, 888 (9th Cir. 2001) (citations omitted). Because he cannot satisfy the lower burden of proof to establish eligibility for asylum, his claim for withholding of removal also fails. Farah v. Ashcroft, 348 F.3d 1153, 1156 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.